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confirm that if the prospective purchaser acquires control of the Texas corporation, as aforesaid, then in your opinion, the real estate in the incorporated city is not subject to foreclosure or escheat."

This department in Opinion No. 0-3911, copy of which is herewith enclosed, has interpreted Article 167, Vernon's Annotated Civil Statutes that lots or parcels of land owned by aliens in any incorporated town or city was an exception to the prohibition contained in Article 166, V.A.C.S., wherein aliens are prohibited from owning land in Texas.

The law relative to the matter in question is contained in Title 5, V.A.C.S. (S.B. No. 142, Ch. 134, 37th Leg. R.S. p. 261). Inasmuch as the courts have not passed upon the question, it is necessary to arrive at the legislative intent by construing the language used in the whole act. For that reason we are quoting same in full:

"Section 1. That Title 3 of the Revised Civil Statutes of the State of Texas, 1911, and all amendments thereto be amended so as to hereafter read as follows:

"Article 15. No alien or person who is not a citizen of the United States shall acquire title to or own any lands in the State of Texas, or acquire any leasehold or other interest in such lands, except as hereinafter provided; but he shall have and enjoy in the State of Texas such rights as to personal property as are or shall be accorded to citizens of the United States by the laws of the nation to which such alien shall belong, or by the treaties of such nation with the United States, except as the same may be affected by the provisions of this title and the General Laws of the State.

"Article 16. This title shall not apply to any land now owned in this State by aliens,

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not acquired in violation of any law of this State, so long as it is held by the present owners; nor to lots or parcels of land owned by aliens in any incorporated town or city of this State, nor to the following classes of aliens, who are, or who shall become, bona fide inhabitants of this State, so long as they shall continue to be such bona fide inhabitants of the State of Texas:

"(1) Aliens who were bona fide inhabitants of this State on the date on which this Act becomes a law.

"(2) Aliens eligible to citizenship in the United States who shall become bona fide inhabitants of this State, and who shall, in conformity with the naturalization laws of the United States, have declared their intention to become citizens of the United States.

"(3) Aliens who are natural born citizens of nations which have a common land boundary with the United States.

"(4) Aliens who are citizens or subjects of a nation which now permits American citizens to own land in fee in such country; and any resident alien who shall acquire land under the provisions of this article shall have five years after he shall cease to be a bona fide inhabitant of this State in which to alienate said land.

"Article 17. The provisions of this title shall not prevent aliens from acquiring lands, or any interest therein, in the ordinary course of justice in the collection of debts; nor from acquiring liens upon real estate, or any interest therein; nor from lending money and securing the same upon real estate, or any interest therein; nor from enforcing any such lien; nor from acquiring and holding title to such real estate, or any interest therein, upon which a lien may

have heretofore or may hereafter be fixed, or upon which a loan of money may have been heretofore or hereafter may be made and secured.

"Article 18. All aliens, prohibited from owning land in this State under the provisions of this title, who shall hereafter acquire real estate in Texas by devise, descent, or by purchase as permitted by this title, may hold same for five years; and if such alien is a minor, he may hold same for five years after attaining his majority, or if of unsound mind, for five years after the appointment of a legal guardian.

"Article 19. Any alien who shall hereafter hold lands in Texas, in contravention of the provisions of this title, may, nevertheless, convey the fee simple title thereof at any time before the institution of escheat proceedings as hereinafter provided; provided, however, that if any such conveyance shall be made by such alien either to an alien or to a citizen of the United States, in trust, and for the purpose and with the intention of evading the provisions of this title, such conveyance shall be null and void; and any such land so conveyed shall be forfeited and escheated to the State absolutely.

"Article 20. It shall be the duty of the Attorney General, or the district or county attorney, when he shall be informed, or have reason to believe that lands in the State are being held contrary to the provisions of this title, to institute suit in behalf of the State of Texas in the district court of the county where such lands are situated, praying for the escheat of the same on behalf of the State, as in case of estates of persons dying without devise thereof and having no heirs.

"Article 21(a). No alien shall ever be appointed or permitted to qualify as guardian of the estate of any minor or person of unsound mind, or as executor or administrator of the

estate of any decedent in this State, unless he is permitted to own land under the provisions of this title.

"Article 21(b). No corporation in which the majority of the capital stock is legally or equitably owned by aliens prohibited by law from owning land in the State of Texas shall acquire title to or own any lands in the State of Texas, or any leasehold or other interest in such lands and land so owned shall be subject to escheat under the provisions of this title as though owned by a non-resident alien.

"Article 21(c). Land owned in trust, either by an alien or by a citizen of the United States, for the beneficial use of any alien or aliens, or any corporation prohibited from owning land in this State under the provisions of this title, shall be subject to forfeiture as though the legal title thereto was in such alien or corporation.

"Article 21(d). All aliens now owning lands in the State of Texas, shall on or before the 1st day of January 1923 file a written report under oath, with the Clerk of the County Court of the County in which such land is located, giving the name, age, occupation, personal description, place of birth, last foreign residence and allegiance, the date and place of arrival of said alien in the United States, and his or her present residence and Post Office address, and the length of time of residence in the State of Texas, the foreign prince, potentate, state or sovereignty, of which the alien may be at the time be a citizen or subject, and the number of acres of land owned by such alien in such county, the name and number of the survey, the abstract and certificate number, the name of the person or persons, from whom acquired, the date when acquired, and shall either describe said land by metes and bounds, or refer to recorded deed in which same is so described, which report shall be known as 'REPORT OF ALIEN OWNERSHIP.' Provided further, that all aliens

hereafter purchasing, or in any manner acquiring lands located in Texas, shall within six months after such purchase, or acquisition, file with the County Clerk of the County in which such land is located, a 'Report of Alien Ownership,' in terms as above required.

"Any alien who may now own land in Texas, or who may hereafter acquire any land in Texas, by purchase or otherwise, who does not, within the time prescribed in this Article, file the reports herein provided for, shall be subject to have such land forfeited and escheated to the State of Texas. The reports herein acquired shall, when the alien is a minor or insane person, be filed by the parent or guardian of such alien. It shall be the duty of the Clerk of the County Court of each county to file and record the reports above provided for in a separate volume, to be entitled, 'RECORD OF ALIEN OWNED LANDS,' for said county, which record shall be alphabetically indexed. The recording fees for recording such reports shall be paid by the alien owner.

"Sec. 2. All laws and parts of laws in conflict herewith are hereby expressly repealed.

"Sec. 3. The fact that aliens who do not propose becoming citizens of the United States are now attempting to acquire title to large bodies of fertile land in this State creates an emergency and an imperative public necessity that this bill shall and it hereby does take effect from and after its passage, and it is so enacted." (Emphasis added)

A careful study of the whole act makes it clear that the Legislature by incorporating Art. 21(b), which we have underscored, did so for the sole purpose of preventing an alien from doing indirectly, (that is by incorporating), from doing what he is prohibited from doing directly. As held in our opinion No. C-3911, an alien may acquire and hold title to real estate located within the corporate

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limits of towns. (Such exception is contained in Art. 16, supra). Then, later in said act appears Art. 21(b) which we quote:

"Article 21(b). No corporation in which the majority of the capital stock is legally or equitably owned by aliens prohibited by law from owning land in the State of Texas shall acquire title to or own any lands in the State of Texas, or any leasehold or other interest in such lands and land so owned shall be subject to escheat under the provisions of this title as though owned by a non-resident alien." (Emphases added).

It is clear to us that the phrase "owned by aliens prohibited by law from owning land in the State of Texas", means that if the aliens who own or control the stock of such corporation are prohibited from owning the real estate in question, then the corporation they control is likewise prohibited. The above construction necessarily follows in that aliens are not prohibited from owning real property in incorporated towns. Said Article provides that land owned by a corporation in which the majority of the capital stock is owned by aliens "shall be subject to escheat under the provisions of this title, as though owned by a non-resident alien." If such a corporation owns land in an incorporated town can it be escheated? We think not, for the Act says it shall be escheated "as though owned by a non-resident alien." If owned by a non-resident alien it cannot be escheated, as the law expressly gives to a non-resident alien the right to own such lands in incorporated towns.

It is also significant to note that in the codification of our statutes in 1925, the above Article 21(d) was changed so as to require not only aliens, but also alien corporations to make written reports under oath to the County Clerk, and providing that alien corporations as well as aliens who own land in Texas or who may hereafter acquire any land in Texas, who do not file such reports shall be subject to have such land forfeited and escheated to the State of Texas. Such Article 21(d) is now codified as Article 176, V.A.C.S.

It is, therefore, the opinion of this department that a corporation in which the majority of the capital stock is legally or equitably owned by aliens may acquire and own lots or parcels of land in any incorporated city or town in this State. It necessarily follows that such lands cannot be escheated.

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We do not know for what purpose such corporation was formed. Of course no corporation can own or hold real estate in this State for ultra vires purposes. Our answer, as above given is subject to Chapter IV of Title 32, V.A.C.S., relative to ownership of lands by corporations.

You have not informed us as to the nationalities who own the majority stock in such corporation, and we are unable to take into consideration any treaty or treaties, (if any) that might affect this situation.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED JUL 20 1946
W. V. Goyert
FIRST ASSISTANT
ATTORNEY GENERAL

BY *W. V. Goyert*
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THIS OPINION
CONSIDERED AND
APPROVED IN
COUNCIL
OF THE
ATTORNEY GENERAL